Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
Crownsville, Maryland 21401
Conference Room 1100A
June 2, 1999

Taylor - Rogers - no
Williams - no

AGENDA

:00 p.m. - 1:05 p.m.	Approval of Minutes of April 7, 1999	John C. North, II, Chairman

PROGRAM AMENDMENTS and REFINEMENTS

:05 p.m. - 1:15 p.m.	Town of Elkton/Amendment - Note Text Changes to Critical Area Program (Comprehensive Review)	Susan McConville, Planner approved
:15 p.m. - 1 :25 p.m.	Calvert County/ Refinement Bell Atlantic, Growth Allocation	Lee Anne Chandler, Planner
:25 p.m. - 1:35 p.m.	Talbot County/ Refinement Bill No. 699 Supplemental Awards of Growth Allocation	Lisa Hoerger, Planner
:35 p.m. - 1:45 p.m.	Talbot County/Amendment Bill No. 701 Reasonable accommodations for disabled citizens	Lisa Hoerger, Planner
1:45 p.m. - 2:05 p.m.	VOTE/FIDS/Timber Harvest Guidance	Claudia Jones, Science Advisor Don VanHassant
2:05 p.m. - 2:15 p.m.	Cecil County/Refinement Change in language for Expansion of Buffer	Susan McConville, Planner
2:15 p.m. - 2:25 p.m.	Queen Anne's County/Refinement Change in language for TDR's	Susan McConville, Planner

PROJECT EVALUATION

2:25 p.m - 2:30 p.m.	St. Mary's County/ - Vote Shore Erosion Control	Tracey Batchedler, Planner

INFORMATIONAL ITEM

2:30 p.m. - 2:40 p.m.	Shoreline Landowners Brochure By the Annapolis Environmental Commission	Meredith Lathbury, Planner
2:40 p.m. - 2:50 p.m.	Old Business New Business - July 7th	John C. North, I, Chairman

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HATS
DOB - Sept 16

Next Commission Meeting July 7, 1999 - Worchester County, Nassawango Country Club

SUBCOMMITTEES

10:00 a.m. - 11:00 a.m. Program Implementation and Amendments

Members: Whitson, Myers, Barker, Williams, Wynkoop, Foor, Johnson, Lawrence, Taylor-Rogers, Duket Graves, Samorajczyk

Queen Anne's County - Text Changes to TDR Program	Susan McConville, Planner
Town of Elkton- Text Changes to Critical Area Program Amendment (Comprehensive Review)	Susan McConville, Planner
Calvert County- Bell Atlantic Growth Allocation Refinement	Lee Anne Chandler, Planner
Talbot County - Tred Avon Farm Growth Allocation	Lisa Hoerger, Planner
Talbot County - Refinement/Bill No. 699 Supplemental Awards of Growth Allocation Amendment/Bill No 701 Reasonable Accommodations for Disabled Citizens	Lisa Hoerger, Planner
Cecil County -Refinement for Buffer Expansion Language	Susan McConville, Planner
Anne Arundel County - Update	Ren Serey, Exe. Dir. Lisa Hoerger, Planner

11:00 a.m. - 11:10 a.m. Project Evaluation

Members: Langner, Bourdon, Cooksey, Giese, Foor, Corkran, Jackson,Goodman, Van Luven, Hearn, Wilde Cain, Olszewski

St. Mary's County - Pt. Lookout State Park Shore Erosion Control	Tracy Batchelder, Planner

11:10 a.m. - 12:00 p.m. Timber Harvest Workgroup

FIDS

Attendance

Bob Cain
Bruce Grey (for H.V.L.)
Dave Bourdon
Dr. Foor
Larry Duket
Bob Goodman

Bob Samorajczyk
Mike Whitson
Dave Cooksey
S. Wynkoop

Johnson
B. Beal
B. Corkran
L. Lawrence
C. Graves
P. Baker
B. Pinto
G. L. Hearn

Chesapeake Bay Critical Area Commission
Department of Housing and Community Development
People's Resource Center
Crownsville, Maryland 21401
April 7, 1999

approved

The Chesapeake Bay Critical Area Commission met at the Department of Housing and Community Development, Crownsville, Maryland. The meeting was called to order by Chairman John C. North, II with the following Members in attendance:

Bourdon, Dave, Calvert County
Rogers, Dr. Sarah Taylor-DNR
Olszewski, John A., Balt. County
Corkran, William, Talbot County
Duket, Larry, Md. Of. Plng.
Samorajczyk, Barbara D., Anne Arundel County
Dr. Foor, James C., Queen Anne's Co.
Stewart, Duncan for Graves, Charles C., Baltimore City
Cain, Deborah, B., Cecil Co.
Williams, Roger, Kent County
Jackson, Joe, Worcester County
Whitson, Michael, St. Mary's County
Wynkoop, Samuel, Prince George's County
Barker, Philip, Harford County
Setzer, Gary for Hearn, J.L., Md. Dept.Env.
Giese, William, Jr., Dorchester Co.
Johnson, Samuel Q., Wicomico Co.
Lawrence, Louise, Md. Dept. Of Agri.

The Minutes of March 3, 1999 were approved as read.

Chairman North presented a Certificate of Appreciation to departing Commission Member, Diane Evans. Diane will be missed very much! The Chairman welcomed two newly appointed members to the Commission, John Olszewski, Baltimore County and Deborah Boyd Cain, Cecil County.

Bill Giese, Commission Member, also representing the Blackwater National Wildlife Refuge, gave a presentation on the control of nutria. He was assisted by Keith Weaver, Blackwater Refuge Staff, and Robert Colona, Program Biologist of DNR. Dr. Sarah Taylor-Rogers commented that the State and the U.S.Fish and wildlife Service have been very concerned about the disappearance of wetlands in Backwater National Wildlife Refuge as well as on State and privately owned lands attributed to damage by nutria. Dr. Taylor-Rogers stated that in an effort to eradicate this animal, at least 17 partners which are federal, state and privately based as well as various interest groups, have been enlisted for support of this pilot program of eradication. She said that hearings are being held this month on a Bill in Congress which supports this pilot program .Dr. Taylor-Rogers told the Commission that Congressman Gilchrest, Congressman Hoyer, Senators Sarbanes and Mikulski are all involved in this effort in hopes of raising this issue to a national level. The history, biology and proliferation of the nutria as well as the ecological effects of the nutria were presented. With an 82% response rate to a national survey, it was reported that 24 states now have problems with nutria causing a major impact to all native species. A goal of this program is to set forth Maryland as a key prototype state in nutria control as a model for other states. A Web site is being established to reach out to the public for their support. Commission Member, Heidi VanLuven asked whether the Commission could assist this effort in any way to which Dr. Taylor-Rogers replied that letters of support could be sent to Congress for wetland restoration and nutria control. Joe Jackson moved (reiterated by the Chairman),for the Commission members to contact their congressmen for the appropriation of funds for the nutria effort. The motion was seconded by Bill Giese and carried unanimously.

Tracy Batchelder, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement the growth allocation policy revision by Kent County. She said that amendments to Kent County's Critical Area Program were approved by the Commission at its January 6th, 1999 meeting. While the

amendments to the Zoning Ordinance allow for growth allocation outside the incorporated towns in the County, additionally, the amendments add new provisions relating to conference centers, resorts, retreats and golf courses. Simultaneously, Kent County has revised its growth allocation policy which will help guide the County in its use of growth allocation. This proposed refinement is consistent with the Critical Area Criteria and the Commission's policy on growth allocation. The Commission supported the Chairman's determination of Refinement.

LeeAnne Chandler, Planner, CBCAC presented for VOTE Calvert County's proposal of two amendments to their Critical Area Program. The first is a map amendment which will be a comprehensive revision of the Critical Area line in Calvert County based on the County's recent aerial orthophotographs. The second is a text amendment which will recognize these new maps as the official Critical Area map for the County. Ms. Chandler stated that in 1988 when the Calvert County Critical Area Program and Critical Area maps were adopted, the maps created were based on the County's tax maps which had inherent errors in them. In 1992, the County adopted the State wetland maps which are based on 1970 aerial photography and are not geographically correct. Additionally, she said that not all areas of the County were mapped and some areas that were covered by two different maps indicated different positions for the Critical Area line in the same location. The inconsistencies were resolved by transferring the wetland line from the State wetland maps to the County's 1992 aerial orthophotographs then drawing the Critical Area line by computer, 1000 feet from tidal waters. Dave Bourdon moved to approve the proposed requests for amendments to the Calvert County Critical Area Program as submitted. The motion was seconded by Louise Lawrence and carried unanimously.

Lisa Hoerger, Planner, CBCAC presented for Concurrence with the Chairman's determination of Refinement, the additional criteria for the Talbot County Council's guidance when voting upon requests for growth allocation in the Critical Area as proposed in Bill 691. Ms. Hoerger gave a detailed description of the proposed criteria developed in response to issues raised during a pending case in Talbot County that was remanded back to the County Council by the Court of Appeals. The Court asked that more specific findings be made to support the decision of the Council. The Commission supported the Chairman's determination of Refinement.

Meredith Lathbury, Planner, CBCAC presented for VOTE the Department of Natural Resources' proposal to place a picnic pavilion on an existing asphalt parking lot in the 100-foot Buffer to Somers Cove in Crisfield. She described the technical aspects of the project and said that this pavilion is part of a recently approved master plan. No impervious surfaces will be created; stormwater management facilities are already in place, and improvements to the existing system are in the process of being implemented; there will be no alterations to drainage patterns.Dave Bourdon moved to approve the project as presented. The motion was seconded by Bill Corkran and carried unanimously.

Ms. Lathbury presented for VOTE the proposal by the Maryland Department of Natural Resources to construct a fish weigh station at Dundee Creek Marina at Gunpowder Falls State Park. This project is located entirely within the 100-foot Buffer to Dundee Creek, on a site designated Intensely Developed Area (IDA). Ms. Lathbury described the technical details of the project. Disturbance will be limited to less than 5,000 square feet. No disturbance to forest or wetland areas is proposed; there are no rare, threatened or endangered species; no in-water work will be conducted; no impervious surfaces are proposed and no runoff is anticipated. Dave Bourdon moved to approve the project as presented and with the condition that the gravel and filter cloth be placed under the wooden decking. The motion was seconded by Bill Giese and carried unanimously.

OLD BUSINESS

There was no old business reported.

NEW BUSINESS

Marianne Mason, Esquire, Assistant Attorney General, DNR and Commission Counsel updated the Commission on legal affairs. She told the Commission that she filed an Appeal on behalf of Chairman North in the Circuit Court on the decision by the Somerset County Board of Appeals on a variance for placement of a new house in the 100-foot Buffer. She said that this is a very large parcel - 70 some acres- and there is plenty of room to place the house outside the Buffer.

Also filed was an Appeal to the Court of Special Appeals from a decision in Wicomico County wherein the Wicomico Circuit Court affirmed the Board of Appeals in granting a pool in the Buffer where the Board of Appeals used a site specific buffer variance provision which had been voided by the Commission. This will be heard next fall.

The Tidewater Homes project in Chesapeake Beach, represented by Tom Deming, has gone to Circuit Court in Calvert County. The Judge has determined that the project approval will be remanded back to the town to conduct further proceedings and to make more findings regarding the Buffer Exempt status of that project.

The Circuit Court has issued an Order of Default in Dorchester County in the case of the Eastern Shore Properties, and a Default Judgement will be received within 20 days. This was a case in which the Dorchester County Board of Appeals approved a variance for a new house in the Buffer, an Appeal was filed on behalf of the Commission, the other side did not respond and - therefore the Default Judgement.

There was another case in Dorchester County involving a gazebo wherein the Court issued a Default Order.

There have been two administrative cases in Anne Arundel County, one involving a shed for storing medical waste at the water wherein the hearing officer denied that variance. The applicant probably will appeal. The second case involved a shed in the Buffer before the Board of Appeals in Anne Arundel, the Commission presented testimony and that variance was denied.

Chairman North appointed a panel to hear amendments for the Town of Elkton's Comprehensive Program: Roger Williams, Chair; Philip Barker, Debbie Cain and Dr. Foor.

There being no further business, the meeting adjourned.

Minutes submitted by: Peggy Mickler, Commission Secretary

Chesapeake Bay Critical Area Commission

STAFF REPORT
June 2, 1999

APPLICANT:	Town of Elkton
PROPOSAL:	Amendment - Town of Elkton, Comprehensive Review
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval, with the Condition that the Commission Panel recommends approval.
PANEL RECOMMENDATION:	Pending
PANEL MEMBERS:	Roger Williams - Chair, Philip Barker, Debra Cain, James Foor
STAFF:	Susan McConville
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article § 8-1809 (g). Approval and adoption of program

DISCUSSION:

Town Notification of Completion of Four Year Comprehensive Review

The Town of Elkton proposes revisions to its Critical Area Program and Zoning Ordinance for the Commission's consideration. The Critical Area Law mandates that each jurisdiction review its entire local Critical Area Program and propose any necessary amendments every four years.

The Town of Elkton has submitted a set of proposed changes to the Town of Elkton's Critical Area Program and the Critical Area Section of the Town Zoning Ordinance in order to bring its program up to date and to improve local implementation and enforcement of the Critical Area Requirements. The town's original program was adopted in 1989. The changes to the Town's Critical Area Program were approved by the Town Commissioners on December 16, 1998. The changes to the Zoning Ordinance were approved January 20, 1999. The Critical Area Commission panel, appointed by the Chairman, held a public meeting on April 28th, 1999, in Elkton to hear the presentation of the proposed amendments by the Town Planner and the consultant to the town and to provide a forum for public discussion. No public comments were received.

Proposed Critical Area Program Revisions

The proposed revisions have been developed through a collaborative effort between the Town Planning and Zoning Office, members of the Commission staff, and consultants to the Town. The proposed revisions will affect the Critical Area Program document and the Zoning Ordinance.

When the Town's Critical Area Program was first adopted, the ordinance elements were included in the document. For this update, the Elkton Critical Area Program was revised extensively in order to:

1. Remove language that was repetitive and more appropriately included in the Town Zoning Ordinance
2. Integrate the Critical Area provisions into the Town's Zoning Ordinance and Subdivisions Regulations.
3. Incorporate the legislative changes that have taken place since the program's adoption.
4. Incorporate policy changes that have been adopted by the Commission since the program's adoption.

Examples of some of the changes incorporated into the Critical Area Program and Zoning Ordinance are as follows:

- Incorporated policy concerning Growth Allocation accounting and hearing methods.
- Incorporated information requirements for site plan review, i.e, identification of Habitat Protection Areas and Buffers, into the Zoning Ordinance.
- Made the Critical Area maps the official maps and adopted them as part of the Zoning Ordinance.
- Incorporated minor changes in language concerning Water-dependent facilities and the Town's BEA policy for consistency with the State Criteria.
- Added provisions for uses in the RCA.

Resource Inventory Update

The Planning and Zoning Office have notified the Commission staff that there are no changes to be updated on the Critical Area Inventory Maps.

Growth Allocation Statement

There have been no growth allocation requests or approvals since the first comprehensive review. However, the Town and County have one outstanding Growth Allocation issue that was created when the Town program was originally adopted. When the Cecil County program was originally adopted in 1988, each of the municipalities was allotted acreage generated from RCA designated County land in the Critical Area. Elkton was given a total of 52.85 acres. When the Town of Elkton's program was adopted in 1989, RCA land mapped in the town generated an additional 20.70 acres, half of which could be used in the RCA. During the interim period while the

program was being adopted, 70 acres of Growth Allocation were awarded to the Kensington/Arundel Corporation for a subdivision project that was underway within the Critical Area. This created a Growth Allocation deficit in the Town that has not been resolved. Resolution of this deficit may require the County to give the Town of Elkton the acreage of Growth Allocation needed to eliminate the deficit. The Town of Elkton has contacted the County and we are working to resolve the issue. (See attached Growth Allocation chart.)

Pending the Panel's recommendation, we recommend that the revisions to the Town's Program and Zoning Ordinance be approved and that a resolution of the Growth Allocation deficit in the town be resolved within 90 days and reported back to the Commission.

ELKTON

CRITICAL AREA CLASSIFICATIONS	
Designation	**Acres**
IDA	254.50
LDA	276.90
RCA (see below)	647.60
TOTAL	**1179.00**

EXPANSION FORMULA FOR CECIL COUNTY	
Total RCA	647.60
less Tidal Wetlands or Federal Land	234.00
Net RCA	413.60
Allow 5% Expansion	0.05
Total Growth Allocation	**20.68**

ELKTON GROWTH ALLOCATION

PROJECT	DATE	AMEND. #	CHANGE	ACRES
Growth allocation total (after map amendments)*				**20.70**
Kensington/Arundel Corp.(see Cecil Co. page also)	?	Prog. Adopt	RCA to LDA	17.15
Weed Property	1/95	ELA-4	LDA to IDA	6.50
Total used (of Town's GA) by Town of Elkton to date				**23.65**

Elkton Growth Allocation Remaining	
for RCA to LDA	-6.75
for LDA to IDA	3.80

* Half of this is to change RCA to LDA, half for LDA to IDA

Chesapeake Bay Critical Area Commission

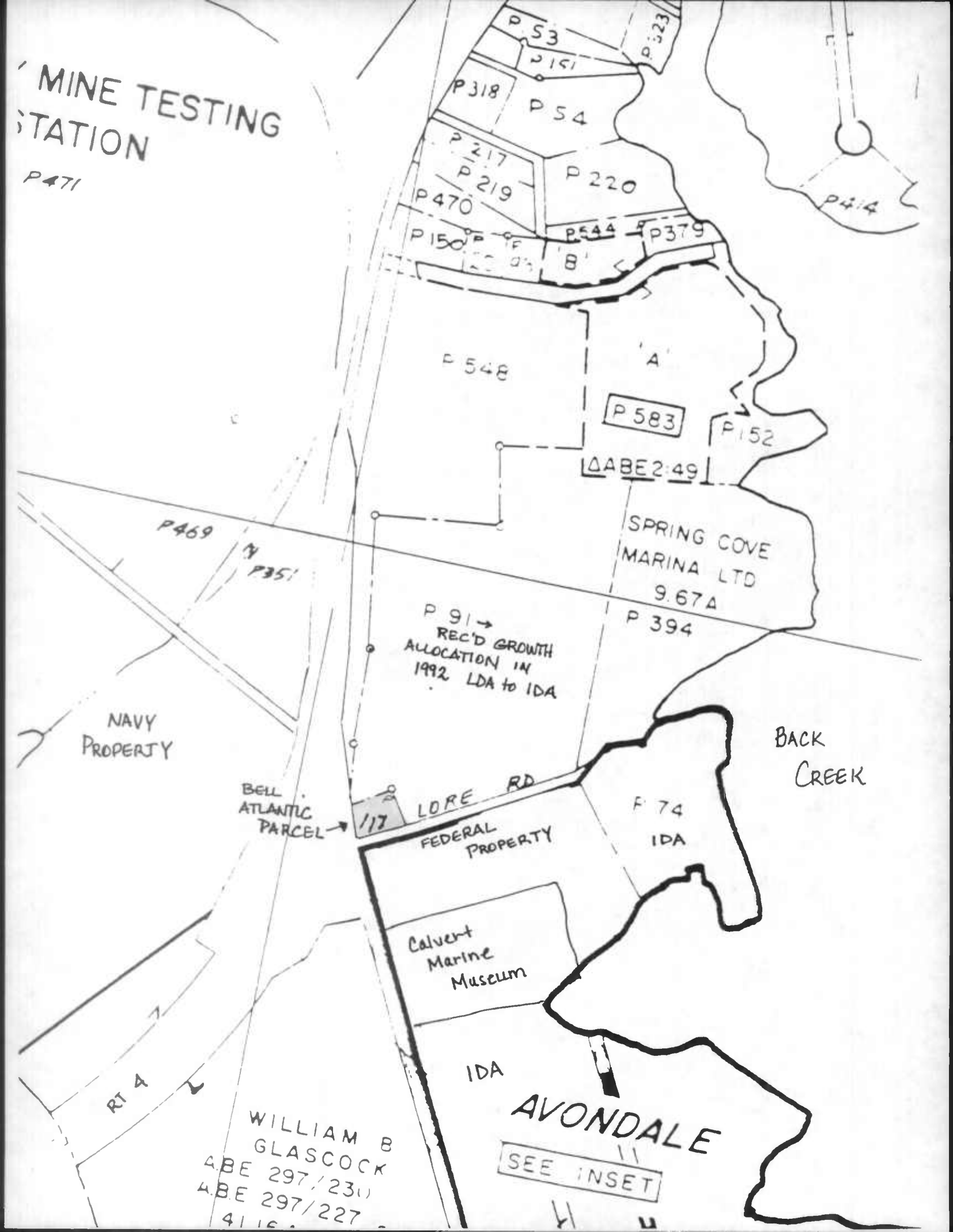
STAFF REPORT
June 2, 1999

APPLICANT:	Calvert County
PROPOSAL:	Refinement - Bell Atlantic Growth Allocation
COMMISSION ACTION:	Concurrence
STAFF RECOMMENDATION:	Approval
STAFF:	LeeAnne Chandler
APPLICABLE LAW/ REGULATIONS:	COMAR 27.01.02.06 - Location and Extent of Future Intensely Developed and Limited Development Areas

DISCUSSION:

Calvert County is proposing to use 0.46 acres of growth allocation to change the Critical Area Overlay on Parcel 117 on Tax Map 44B from Limited Development Area (LDA) to Intense Development Area (IDA). The parcel currently contains a Bell Atlantic telephone switching facility. The proposed use is an expansion of the same. The expansion will require impervious surface coverage of 41% of the parcel and would require a variance within the LDA. This parcel is in the Solomons Town Center, which is a priority area for use of growth allocation. One requirement for receiving growth allocation in Calvert County is that the project must demonstrate that a measurable public benefit will be realized from the project. Improved telephone service to the Solomons area would be considered a public benefit.

Land use surrounding the parcel includes an office park under construction (on a parcel previously granted growth allocation), MD 2/4, Naval facilities, and high density residential. Most of the area is designated IDA. This project appears to be consistent with COMAR 27.01.02.06 and the Commission's policy on the use of growth allocation. The acreage of the entire parcel will be deducted from the County's remaining growth allocation.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Chesapeake Bay Critical Area Commission

STAFF REPORT
June 2, 1999

APPLICANT: Talbot County

PROPOSAL: Refinement - Bill No. 699, Supplemental Award of Growth Allocation

COMMISSION ACTION: Concurrence

STAFF: Lisa Hoerger

APPLICABLE LAW/ REGULATIONS: Natural Resources Article §8-1809 (p) and Code of Maryland Regulations 27.01.02.06 A (2)

DISCUSSION:

The Talbot County Council recently approved Bill No. 699 which enables the County to give additional growth allocation to each of its municipalities. This legislation was originated by a request from the Town of Easton for 450 acres of additional growth allocation. This request by the Town is based on the estimated planning needs ten years into the future.

The County Planning Commission unanimously recommended awarding the Town of Easton 170 acres of growth allocation with no attached conditions or restrictions. The Talbot County Council chose to include provisions whereby the Council has the authority to impose conditions on growth allocations allotted to the towns. Each request for growth allocation will be reviewed by the County Council and the Town of Easton on a case by case basis; therefore, no additional acres were allotted to the town under this bill.

The amendment to the Zoning Ordinance reads as follows:

> Upon request for supplemental growth allocation by any municipal corporation within the County, the County Council may transfer growth allocation to the municipal corporation and may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the County Council may consider appropriate. The procedure for awarding supplemental growth allocation shall be the same as that for initiating a text amendment to the Critical Area provisions in the Zoning Ordinance as set forth in Section 19.14 (c) (iii).

The Code of Maryland Regulations (COMAR) at 27.01.02.06 A (2) states:

> When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.

COMAR provides for this type of interaction between the Counties and their respective municipalities in order to effectively meet their future planning needs. As such, the Chairman requests your concurrence with this refinement.

Chesapeake Bay Critical Area Commission

STAFF REPORT
Update
June 2, 1999

APPLICANT:	Talbot County
PROPOSAL:	Amendment - Bill No. 701, Provide for Reasonable Accommodations for Disabled Citizens
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Pending Panel's Recommendation
STAFF:	Lisa Hoerger
APPLICABLE LAW/ REGULATIONS:	Natural Resource Article §8-1809 (o)

DISCUSSION:

On Thursday, May 27, 1999 the panel assigned to hear this amendment request held a public hearing in Easton. The panel was chaired by Dr. Foor. The members in attendance were Bill Corkran, Larry Duket, Bill Giese and Bob Goodman.

The requested amendment is Bill No. 701 passed by the Talbot County Council to amend and enact the following into the County Zoning Ordinance:

(7) Reasonable Accommodation for the Needs of Disabled Citizens

> (i) Notwithstanding any other provisions of this Ordinance, and without regard to the standards for appeals, variances or special exceptions set forth elsewhere in this Zoning Ordinance, the Board of Appeals and other permitting authorities and officials shall make reasonable accommodations for the benefit of disabled citizens in the consideration of any building permit, administrative appeal, special exception, or variance.

Dan Cowee, Planning Officer for Talbot County, presented the panel with a brief history of the legislation. Mr. Cowee explained that the Talbot County Zoning Ordinance allows private individuals to introduce legislation, and that this amendment was introduced in that manner. The County Council subsequently requested the Planning Commission to make a recommendation to them concerning this legislation. The County attorney, Mike Pullen, reviewed the language and prepared an explanation to the Planning Officer as to why this legislation is not required under the Americans with Disabilities Act (ADA). Mr. Pullen stated:

> The ADA has not been applied to my knowledge to require amendments to zoning ordinances to incorporate the concept of reasonable accommodation. The proposed amendment displaces all competing public polices expressed through existing land use controls, and makes consideration of the particular circumstances of individuals with disabilities of overriding and superseding importance. As a matter of public policy their interest certainly has a place, but this legislation makes those interests pre-eminent, devoid of any consideration of countervailing interests or public polices. This absence of any balancing and the elimination of any discretion to consider other factors besides the individual's disability goes beyond even what the ADA would require were it applicable. Finally, the absence of any limitation of the variance, special exception, etc. to occupancy by the individual with a disability makes the ordinance broader than necessary to achieve its intended purpose.
>
> (Letter from Pullen to Cowee, October 4, 1998)

In a letter dated October 6, 1998, Mr. Pullen stated the position of the Department of Justice, Disability Rights Division that, "... it is their opinion that the ADA does not apply to privately owned property in general and that it does not require legislation of this type."

As a result of this interpretation, the Planning Commission took no further action on this proposed legislation until the County Council made a second request. At its meeting on September 2, 1998, the concerns of the Planning Commission were how to define reasonable accommodation and how to define disabled. Discussion also centered around how to provide enforcement and whether a sunset provision should be incorporated. The Planning Commission voted 3:1 that the legislation as drafted, be denied.

The County Council then heard the amendment. Several options were considered by the Council at the suggestion of the Planning Officer, in order to make it easier to implement in terms of providing some type of standards by which to evaluate each case. Absent any criteria, the Planning Office recommended the legislation, as drafted, by denied. The present language does not provide for any standards, nor does it define reasonable accommodation or disabled citizens. Mr. Cowee told the panel that several citizens attended the County Council hearing and provided support for the legislation, including the individual sponsoring the bill. The County Council approved the legislation, as drafted, 5 to 0.

There were no other public comments at the hearing held by the Chesapeake Bay Critical Area Commission panel. The hearing and record were closed that evening. The recommendation of the panel is pending the panel meeting to be held the morning of the June 2, 1999 Commission Meeting.

Chesapeake Bay Critical Area Commission

STAFF REPORT
June 2, 1999

APPLICANT:	Maryland Department of Natural Resources
PROPOSAL:	Chesapeake Bay Critical Area Timber Harvest Guidelines
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Claudia Jones
APPLICABLE LAW/ REGULATIONS:	COMAR 27.01.09.01 (Habitat Protection Areas)

DISCUSSION:

The Critical Area Criteria recognize forests as a protective land use to be managed for timber, water quality, and wildlife. Forest interior dwelling bird (FID) habitat is one type of Habitat Protection Area covered under the Critical Area Program. The Critical Area Commission has a Memorandum of Understanding/General Approval with the Department of Natural Resources (DNR) that was approved by the Commission in 1995. The Timber Harvest Guidelines will be used in conjunction with the General Approval for timber harvest activities within the Critical Area. The General Approval details the process for the approval of timber harvest plans by the Department of Natural Resources. These Guidelines provide more specific direction for reviewing individual timber harvest plans in conjunction with the protection of FID habitat.

These Guidelines were compiled by a task force representing the Maryland Forests Association, Association of Forest Industries, Forestry Board Association, the Nature Conservancy, Partners in Flight, the Department of Natural Resources, and the Critical Area Commission. This task force worked over two years to resolve issues involving timber harvesting within FID habitat. A special Commission workgroup on FID has reviewed the Guidelines. The following is a synopsis of the Guidelines:

Management recommendations are determined based on forest type in conjunction with the quality of the habitat. Quality of habitat is determined by size of forest tract, amount of forest within a 3-mile radius of the forest stand, age of forest, and association with perennial streams.

Forest types include:

Loblolly pine forest
Virginia pine forest

Mixed hardwood -pine
Upland Hardwood forest
River Terrace/Ravine/Cover Hardwood
Riparian forest
Regionally rare or uncommon coastal plain forests

If a forest tract is less than 50 acres or is composed of greater than 60% basal area of loblolly and/or pond pine no FID conservation measures are required.

General conservation measures for all forest types include:

-New permanent forest openings are not permitted in the forest interior (greater than 300 feet from forest edge.

-Some conversion to loblolly pine stands is permitted south of Rt. 50 on the Western Shore and south of the Chester river on the Eastern Shore except in riparian forest types, river terrace/ravine/cove hardwoods, and regionally rare coastal plain forests. Conversion should be limited to: smaller forests (less than 100 acres), forest edges, adjacent to existing loblolly pine stands, in narrow peninsulas of forest that extend into a nonforested area.

-Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older.

- Retention of snags and dead woody debris on the forest floor.

- Timber harvest is encouraged to occur outside the period of April 1-July 31, the breeding season for most FID.

- Focus even-aged management with a long rotation cycle near the periphery of the forest tract and use single-tree selection in the more interior portions.

Timber harvest in upland hardwood forests, riparian forests and regionally rare coastal plain forest types are a little more restrictive than other types because these areas are the most valuable to FID. For example, cutting is prohibited in Bald Cypress, Atlantic White-cedar or Eastern Hemlock forests or old growth forests of 5 acres or larger. River Terrace/Ravine/Cove hardwoods single tree selection is allowed. For upland hardwood forests harvesting is based on size of forest tract and percent forest cover within 3 miles. For riparian forests width of forest is also a factor. There are tables in the Guidelines for determining allowable silvicultural methods in these types of forest. For both of the latter categories generally the greater percentage of forest cover within a 3- mile radius, the more cutting alternatives that are provided.

Attachment

FIDS/FORESTRY TASK FORCE

CHESAPEAKE BAY CRITICAL AREA

TIMBER HARVEST PLAN GUIDELINES

March 1999

INTRODUCTION

Forest Interior Dwelling (FIDs) birds are those species of birds that require relatively large blocks of forest land with a high percentage of forest interior in order to successfully nest. Forest interior can be defined as forest cover more than 300 feet from the nearest forest edge. Studies have indicated a decline in the numbers of many of these species. There are a number of potential reasons for the decline with one being the permanent loss of nesting habitat. As growth and development expand into previously undeveloped areas, forest cover that was once broken only by rivers, fields and the occasional road are being converted to roads, subdivisions and other types of development. Remaining forests are smaller and have a much lower percentage, if any, of forest interior.

Timber harvesting also has an impact on nesting habitat although the effects are temporary, lasting until the regenerating forest has reached the size when it is once again suitable for FID nesting. In an effort to resolve issues involving timber harvesting in FID habitat in the Chesapeake Bay Critical Area, the Department of Natural Resources convened a group of individuals to address those issues and develop solutions. Those individuals represented DNR Forestry, Wildlife & Heritage, Association of Forest Industries, Maryland Forests Association, Partners in Flight, Critical Area Commission, Forestry board Association and the Nature Conservancy. Their task was to develop consistent, practical guidelines for timber harvesting in the Critical Area.

This document is the result of the group's effort. It provides guidance to the resource managers who prepare and review timber harvest plans in the Chesapeake Bay Critical Area. The guidelines contained herein are designed to enable landowners to harvest timber in such a way that will provide sufficient protection to FID habitat while limiting the restrictions placed on the landowner.

These guidelines, if followed, will provide a virtually automatic approval of the harvest plant (at least as it relates to FID habitat). It is expected that most, but not all, harvest plans will be covered by these guidelines. There may be cases that just don't meet the guidelines. In these cases, or if the landowner would like to deviate from these guidelines, an on-site review can still be done. It is the intent of the Critical Area Commission that DNR staff who do the on-site review will work closely with the landowner to achieve a reasonable agreement on the amount and location of timber to be selectively harvested outside of these guidelines.

These guidelines were written for Critical Area timber harvests. However, it is hoped that timber harvests that occur on State or private land outside of the Critical Area would voluntarily follow these guidelines.

Definitions

A. Potential FIDS habitat

Any forest tract that meets either of the following conditions is potential FIDS habitat:

(1) Forest tracts greater than 50 acres and at least 10 acres of "interior" habitat (forest > 300 feet from the nearest forest edge).

(2) Riparian forests that are, on average, at least 300 feet in total width and greater than 50 acres in total forest area. The stream within the riparian forest must be perennial, as indicated on the most recent 7.5 minute USGS topographic maps or as determined by a site visit.

NOTE: Two forest tracts are considered noncontiguous or disjunct if separated by at least 30 feet of nonforested habitat, about the typical width of a 2-lane, paved county road. When measuring to determine FID potential, consider the entire forest tract and ignore property and Critical Area boundaries. When determining recommendations, property lines and size of property must be considered.

B. High quality FIDS habitat

Predominantly mature hardwood or mixed hardwood/pine forest tract at least 100 acres in size, of which forest interior habitat (forest ≥ 300 feet from the nearest forest edge) comprises at least 25% of the total forest area, and contains one or more of the following:

(1) at least one highly area-sensitive species (see Critical Area Guidance Paper No. 1) or Black-and-white Warbler, as a probable or confirmed breeder

(2) riparian forest bordering a perennial stream or river and, on average, at least 600 feet in width

(3) mature river terrace, ravine, or cove hardwoods, located at least 300 feet from the nearest forest edge

(4) at least 5 contiguous acres of old growth forest, located at least 300 feet from the nearest forest edge

(5) contiguous forest acreage of greater than 500 acres.

C. Coastal plain forest types considered FIDS habitat

(1) Loblolly Pine (> 60% of basal area in loblolly, shortleaf and/or pond pine)
(2) Virginia Pine (> 60% of basal area in Virginia pine)
(3) Mixed Hardwood/Pine (25-60% of basal area in pine)
(4) Upland Hardwoods (< 25% of basal area in pine)
(5) River Terrace/Ravine/Cove Hardwoods
(6) Riparian Forest
(7) Regionally Uncommon or Rare Forest Types, such as:
    a. Bald Cypress
    b. Atlantic White-cedar
    c. Eastern Hemlock
    d. Old Growth, as defined in DNR's 1989 report on "Old Growth Forest Ecosystems"

D. New permanent forest openings

Any opening created during timber harvest operations that is not allowed to return to canopy closure.

LOBLOLLY PINE FORESTS

Description

This forest type includes those areas where at least 60% of the basal area is comprised of loblolly, shortleaf and/or pond pine. No FIDS-related conservation measures are required in this forest type.

Conservation Guidelines

Landowners and members of the forestry community are encouraged to consider and implement the following guidelines whenever possible.

1. Avoid establishing new permanent forest openings during timber harvest operations, especially in forest interior areas (i.e., > 300 feet from the nearest forest edge). For example:
   - focus traditional wildlife management practices, such as wildlife food plots, near existing forest edges
   - minimize the number, length and width of forest roads
   - avoid mowing forest roads during April-July to help minimize cowbird use of the forest area.

2. Retain some hardwoods in the understory, midstory and overstory.

3. Retain a no-cut buffer of at least 100 feet along each side of perennial streams, rivers and extensive forested wetlands.

4. Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older.

5. Retain snags in timber harvest areas. Select the largest snags available and, where possible, arrange in groups of 3 or more. The recommended density and size of snags is $\geq$ 8 snags per acre that are 8 inches or more in dbh.

6. During harvest operations, retain dead and downed woody debris on the forest floor.

7. Encourage timing of timber harvesting to occur outside the period of April 1-July 31, the breeding season for most FIDS.

VIRGINIA PINE FORESTS

Description

In Virginia pine forests, at least 60% of the basal area is Virginia pine and the remainder is hardwoods. Typically, this forest type occurs on dry upland sites and stands are usually small.

Conservation Measures

1. New permanent forest openings are not permitted in the forest interior portions of a forest tract, which is defined as forested areas greater than 300 feet from the nearest forest edge. In non-interior forested areas, new permanent openings will be considered on a case by case basis by the HBCP Regional Manager and only for forest tracts greater than 200 acres in landscapes with 30-60% forest cover and forest tracts greater than 100 acres in landscapes with > 60% forest cover. Forest openings should be small (< 1 acre), located adjacent to an existing forest edge, and otherwise avoid deleterious "edge" effects.

2. Conversion to loblolly pine stands (e.g., forests in which loblolly pine comprise 60% or more of the basal area) is permitted south of Rt. 50 on the Western Shore and south of the Chester River on the Eastern Shore. Converted stands must be managed so that some hardwoods are maintained in the understory, midstory and canopy.

3. Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older. Avoid "checkerboard" management.

4. Encourage the retention of snags in timber harvest areas. Select the largest snags available and, where possible, arrange in groups of 3 or more. The recommended density and size of snags is $\geq$ 8 snags per acre that are 8 inches or more in dbh.

5. Encourage the retention of dead and downed woody debris on the forest floor.

6. Encourage timing of timber harvesting to occur outside the period of April 1-July 31, the breeding season for most FIDS.

MIXED HARDWOOD-PINE FORESTS

Description

In upland mixed hardwood-pine forests, pine (loblolly, shortleaf and/or pond pine) represent 25-60% of the basal area. Single-tree selection, which retains at least 70% canopy closure, is usually the recommended or preferred, but not required, timber harvest method. Examples of forest restoration which provide benefits to FIDS are provided on page 13.

Conservation Measures

1. New permanent forest openings are not permitted in the forest interior portions of a forest tract, which is defined as forested areas greater than 300 feet from the nearest forest edge. In non-interior forested areas, new permanent openings will be considered on a case by case basis by the HBCP Regional Manager and only for forest tracts greater than 200 acres in landscapes with 30-60% forest cover and forest tracts greater than 100 acres in landscapes with > 60% forest cover. Forest openings should be small (< 1 acre), located adjacent to an existing forest edge, and otherwise avoid deleterious "edge" effects.

2. Conversion to loblolly pine stands (e.g., forests in which loblolly pine comprise 60% or more of the basal area) is permitted south of Rt. 50 on the Western Shore and south of the Chester River on the Eastern Shore. Elsewhere, natural regeneration is required and hardwood control is prohibited. The following is encouraged when considering conversion:

   a. Within a forest tract, avoid converting very large areas (e.g., > 30 acres) of mixed hardwood-pine forest, especially those containing relatively old forest conditions (e.g., > 60-70 year old stands). Maintain as large and as contiguous an area as possible in mixed hardwood-pine and hardwood-dominated forest.

   b. Focus conversion in the following areas:
      (1) Forest tracts with relatively low FIDS habitat suitability. For example, small (< 100 acres) forest tracts lacking mature mixed hardwood-pine stands, with a relatively small proportion of forest interior habitat and located in predominantly nonforested landscapes (i.e., < 30% forest within 3 miles).
      (2) Along and within 300-600 feet of existing permanent forest edges (e.g., along forest-field edges, forest-roadside edges). Avoid conversion in forest interior areas.
      (3) Adjacent to existing loblolly pine stands.
      (4) In narrow (< 600 feet wide) peninsulas of forest that extend out into a nonforested area.

   c. Manage converted stands so that some hardwoods are maintained in the understory, midstory and canopy.

   d. Arrange converted stands in such a way that maximizes the amount of remaining contiguous, hardwood-dominated forest interior habitat. Avoid a "checkerboard" design of alternating stands of loblolly pine and hardwood-dominated stands.

3. Although not required, the silvicultural methods listed in Table 1 are strongly encouraged. Generally, the recommended harvest strategy is single-tree selection. Alternatively, consider the following options:

   a. Focus even-aged management with a long rotation cycle near the periphery of the forest tract and use single-tree selection in the more interior portions. Plan harvests so that older successional stages are adjacent to each other.

b. Use even-aged management with a long rotation cycle and plan harvests so that older successional stages are adjacent to each other.

4. Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older. Avoid "checkerboard" management.

5. Encourage the retention of snags in timber harvest areas. Select the largest snags available and, where possible, arrange in groups of 3 or more. The recommended density and size of snags is $\geq$ 8 snags per acre that are 8 inches or more in dbh.

6. Encourage the retention of dead and downed woody debris on the forest floor.

7. Encourage timing of timber harvesting to occur outside the period of April 1-July 31, the breeding season for most FIDS.

UPLAND HARDWOOD FORESTS

scription

and hardwoods are those forests in which pine (Virginia, loblolly, shortleaf, and/or pone pine) comprises less than 25% ne total basal area. Single-tree selection, which retains at least 70% canopy closure, is usually the recommended or ferred timber harvest method in both forest types. However, as forest tract size and the percentage of forest cover in the rounding landscape increases, other silvicultural options are possible such as clearcutting, limited group selection and ch clearcutting. Additional silvicultural options are possible if forest restoration is part of the overall forest management n. Examples of forest restoration are provided on page 13.

nservation Measures

See Table 1.

New permanent forest openings are not permitted in the forest interior portions of a forest tract, which is defined as forested areas greater than 300 feet from the nearest forest edge. In non-interior forested areas, new permanent openings will be considered on a case by case basis by the HBCP Regional Manager and only for forest tracts greater than 200 acres in landscapes with 30-60% forest cover and forest tracts greater than 100 acres in landscapes with > 60% forest cover. Forest openings should be small (< 1 acre), located adjacent to an existing forest edge, and otherwise avoid deleterious "edge" effects.

Conversion to loblolly pine stands (e.g., forests in which loblolly pine comprise 60% or more of the basal area) is permitted only as indicated in Table 2 and in those parts of the Critical Area where loblolly pine occurred "historically" (as described in Maryland Geological Survey). Converted stands must be managed so that some hardwoods are maintained in the understory, midstory and canopy, and arranged in such a way that maximizes the amount of contiguous, hardwood-dominated and mixed hardwood-pine forest interior habitat.

Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older. Avoid "checkerboard" management.

Single-tree selection is the recommended harvest strategy. Below are other options:

a. Focus even-aged management with a long rotation cycle near the periphery of the forest tract and use single-tree selection in the more interior portions. Plan harvests so that older successional stages are adjacent to each other.

b. Use even-aged management with a long rotation cycle and plan harvests so that older successional stages are adjacent to each other.

Encourage the retention of snags in timber harvest areas. Select the largest snags available and, where possible, arrange in groups of 3 or more. The recommended density and size of snags is $\geq$ 8 snags per acre that are 8 inches or more in dbh.

Encourage the retention of dead and downed woody debris on the forest floor.

Encourage timing of timber harvesting to occur outside the period of April 1-July 31, the breeding season for most FIDS.

Table 1. Silvicultural methods allowable in upland hardwoods (< 25% loblolly, shortleaf and/or pond pine).

% forest within 3 miles	Forest Tract Size			
	60-100 acres	100-200 acres	200-500 acres	> 500 acres
< 30%	Single-tree selection Group selection and patch clearcutting within 300' of forest edge	Single-tree selection Group selection and patch clearcutting within 300' of forest edge. Small (<15 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat	Single-tree selection Group selection and patch clearcutting within 300' of forest edge. Small (<15 acres) to medium-sized (15-30 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat	Single-tree selection Group selection and patch clearcutting within 300' of forest edge Small (<15 acres) to medium-sized (15-30 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat Some conversion to loblolly pine possible: - within 300' of an existing forest edge - within 300' of an existing pine stand
30-60%	Single-tree selection Group selection and patch clearcutting within 300' of forest edge Small (<15 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat	Single-tree selection Group selection and patch clearcutting within 300' of forest edge Small (<15 acres) to medium-sized (15-30 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat	Single-tree selection Single-tree selection with limited group selection. Group selection and patch clearcutting within 300' of forest edge. Small (<15 acres) to medium-sized (15-30 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat. Some conversion to loblolly pine possible: - within 300' of an existing forest edge - within 300' of an existing pine stand	Single-tree selection Single-tree selection with limited group selection. Group selection and patch clearcutting within 300' of forest edge. Small (<15 acres) to medium-sized (15-30 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat. Some conversion to loblolly pine possible: - within 300' of an existing forest edge - within 300' of an existing pine stand - in blocks of 10 acres or less and located adjacent to an existing forest edge or pine stand

% forest within 3 miles	Forest Tract Size			
	50-100 acres	100-200 acres	200-500 acres	> 500 acres
> 60%	Single tree selection Single tree selection with limited group selection Some patch clearcutting within 300' of forest edge Small (<15 acres) clearcuts arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat	Single tree selection Single-tree selection with limited group selection Group selection and patch clearcutting within 300' of forest edge Small (<15 acres) to medium-sized (15-30 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat Some conversion to loblolly pine possible: - within 300' of an existing forest edge - within 300' of an existing pine stand	Single tree selection Single tree selection with limited group selection Group selection and patch clearcutting within 300' of forest edge Small (<15 acres), medium (15-30 acres) and large (30-50 acres) clearcuts adjacent to a forest edge and arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat Some conversion to loblolly pine possible: - within 300' of an existing forest edge - within 300' of an existing pine stand - in blocks of 10 acres or less and located adjacent to an existing forest edge or pine stand	Single-tree selection Single-tree selection with limited group selection Group selection and patch clearcutting within 300' of forest edge Small (<15 acres), medium (15-30 acres) and large (30-50 acres) clearcuts arranged in a manner which maximizes the amount of contiguous, mature forest interior habitat Some conversion to loblolly pine possible: - within 300' of an existing forest edge - within 300' of an existing pine stand - in blocks of 20 acres or less and located adjacent to an existing forest edge or pine stand

* Single-tree selection harvests must retain at least 70% canopy closure throughout the harvest area.

RIPARIAN FOREST

;cription

arian forests occur adjacent to perennial streams, rivers and expansive forested wetlands. They are usually dominated ıardwoods (< 25% basal area in pine) but may include mixed hardwood-pine stands (25-60% of basal area in pine). In ture or older forest conditions, these areas provide exceptional habitat for many FIDS.

nservation Measures

See Table 2.

New permanent forest openings are not permitted.

Conversion of riparian hardwood or mixed hardwood-pine forest to loblolly pine forests (e.g., forests in which loblolly pine comprise 60% or more of the basal area) is not permitted.

Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older.

Encourage the retention of snags in timber harvest areas. Select the largest snags available and, where possible, arrange in groups of 3 or more. The recommended density and size of snags is ≥ 8 snags per acre that are 8 inches or more in dbh.

Encourage the retention of dead and downed woody debris on the forest floor.

Encourage timing of timber harvesting to occur outside the period of April 1-July 31, the breeding season for most FIDS.

able 2. Silvicultural methods allowable in riparian forests.

	< 30% Forest Cover Within 3 Miles			30-60% Forest Cover Within 3 Miles			> 60% Forest Cover Within 3 Miles		
Riparian Forest Width[1]	< 200 ac.	200-500 ac.	> 500 ac.	< 200 ac.	200-500 ac.	> 500 ac.	< 200 ac.	200-500 ac.	> 500 ac.
300-600 feet wide	STS[2]	NC-100[3]	NC-100	STS	STS	STS	STS	STS	STS
600-1,000 feet wide	NC-100	NC-100	NC-150[4]	STS	NC-100	NC-100	STS	STS	NC-100
> 1,000 feet wide	NC-100	NC-150	NC-150	STS	NC-100	NC-150	STS	NC-100	NC-150

[1] For each of the riparian forest width categories below, the length of riparian forest must extend for a distance of at least 1,000 feet. This distance should be measured as the length of unbroken forest, measured as a straight line, along the mean high tide line, nontidal perennial streams and rivers.
[2] STS = Single-tree selection may occur within the landward 50 feet of the Buffer.
[3] NC-100 = No cutting may occur within the Buffer.
[4] NC-150 = No cutting may occur within the Buffer or within 150 feet of the mean high tide line or nontidal perennial streams, whichever width is greatest.

RIVER TERRACE/RAVINE/COVE HARDWOODS

Description

This complex of forest types occurs near or adjacent to streams (perennial and, in some case, intermittent), rivers and extensive forested wetlands. On the Maryland coastal plain, these forest types (1) frequently occur on relatively steep (> 15% slope) but short, dissected slopes along stream and river courses; (2) are usually hardwood-dominated but may include some mixed hardwood-pine growth; (3) are usually limited to a relatively thin 50-300 foot band of forest sandwiched between more upland and lowland forest types; (4) tend to have relatively high horizontal and vertical structural vegetative diversity; and (5) often contain microhabitats important to certain FIDS (e.g., seepage areas, mountain laurel thickets). These areas are among the "FIDS hotspots" within coastal plain forests. They often support highly area-sensitive species such as Hooded Warbler, Worm-eating Warbler and American Redstart that might otherwise be absent in similar-sized forests lacking this stand type.

Conservation Measures

1. Single-tree selection only is permitted if these forest types occur within *high quality FIDS habitat*. No harvesting is encouraged whenever possible.

2. If FIDS habitat is present but it is not *high quality FIDS habitat*, single-tree selection with limited group selection is permitted.

3. New permanent forest openings are not permitted.

4. Conversion of these forest types to loblolly pine forests (e.g., forests in which loblolly pine comprise 60% or more of the basal area) is not permitted.

5. Plan timber harvests in such a way that maximizes the amount of contiguous forest that is pole-stage or older.

6. Encourage the retention of snags in timber harvest areas. Select the largest snags available and, where possible, arrange in groups of 3 or more. The recommended density and size of snags is $\geq$ 8 snags per acre that are 8 inches or more in dbh.

7. Encourage the retention of dead and downed woody debris on the forest floor.

8. Encourage timing of timber harvesting to occur outside the period of April 1-July 31, the breeding season for most FIDS.

REGIONALLY RARE OR UNCOMMON COASTAL PLAIN FOREST TYPES

:ription

e include but are not necessarily limited to stands where Bald Cypress, Atlantic White-cedar or Eastern Hemlock occur ırally" (i.e., not planted) as an associate or plurality of the stocking. Also considered here is old growth forest, as ed in the 1989 DNR report "Old Growth Forest Ecosystems". The extent of old growth must exceed 5 contiguous s. The minimum size of other rare or uncommon forest types will be determined by the HBCP Regional Manager on a by case basis.

servation Guidelines

No harvesting in these forest types is permitted if they occur within *high quality FIDS habitat*.

In regionally rare or uncommon coastal plain forest types where *high quality FIDS habitat* is not present, conservation measures will be prescribed on a case by case basis by the HBCP Regional Manager. These measures could include no harvesting.

SOME EXAMPLES OF FOREST RESTORATION THAT WILL ENHANCE FIDS HABITAT

Increase the width of riparian forest corridors to at least 300 feet and, ideally, to 600 feet or more.

Reforest existing openings in forest tracts, especially those located in forest interior areas.

Reforest existing nonforested areas along the edge of a forest tract. Select areas which maximize the forest area:edge ratio and total forest tract size.

Allow existing woods roads to reforest or reduce their width so that canopy closure is maintained over the road.

Establish a core area where little or no harvesting occurs. Select areas at least 5 acres in size and locate them, if possible, in the most interior part of the forest and adjacent to other areas with little or no harvesting (e.g., Critical Area Buffer, steep slopes).

Chesapeake Bay Critical Area Commission

STAFF REPORT
June 2, 1999

APPLICANT:	Cecil County
PROPOSAL:	Refinement - Proposed Text Amendments for Buffer expansion language for contiguous steep slopes and water dependent facilities.
COMMISSION ACTION:	Concurrence with Chairman's Determination
STAFF RECOMMENDATION:	Approval
STAFF:	Susan McConville
APPLICABLE LAW/ REGULATIONS:	Refinement: COMAR 27.01.09.01 (Habitat Protection Areas) and COMAR 27.01.03.03 (Water-Dependent Facilities)

DISCUSSION

The text amendment proposed by Cecil County are in response to a recommendation from Commission staff that the Buffer expansion language for contiguous steep slopes in Cecil County's Critical Area program was not consistent with the State Criteria.

The language of COMAR 27.01.09.01C(7) states that the Buffer "shall" be expanded in the case of contiguous slopes of 15 percent or greater. The Commission has consistently applied this language to require mandatory Buffer expansion for contiguous steep slopes.

The effect of the change in language will be to remove the County's requirement that the expansion of the Buffer for steep slopes depends upon a determination of the probability of adverse impact from a specific development.

The Criteria direct local jurisdictions to use all of the Buffer criteria in *developing* their programs (COMAR 27.01.09.01C) and the Commission determined that the Buffer should not only be established, but also expanded, uniformly throughout the Critical Area where contiguous steep slopes exist at or near the shoreline. Buffer expansion in the case of steep slopes is not a function of project review but of program implementation.

The Critical Area Act directed the Commission "to establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, *even if pollution is controlled,* the number, movement, and activities of persons in that area can create adverse environmental impacts." In addition to its function as a mechanism for the removal or reduction of sediments, nutrients, and toxic substances in runoff, the Buffer is intended to provide an area of transitional habitat between aquatic and upland communities.

In reviewing Cecil County's language, it was recognized that the Commission is charged by the Act to insure that the Criteria are applied consistently and uniformly statewide. All other local jurisdictions require the mandatory expansion.

The amendment affecting the water-dependent facilities section of the County program added language to clarify that new or expanded development may be permitted in the Buffer in IDAs and LDAs and not in RCAs, subject to certain conditions and except as otherwise provided in the regulations. (See attached.)

The Chairman of the Critical Area Commission has determined that these changes constitute refinements to the Critical Area Program and is seeking concurrence with that determination.

CECIL COUNTY COMMISSIONERS

AMENDMENT TO THE CECIL COUNTY

ZONING ORDINANCE

WHEREAS, Article 66B, Annotated Code of Maryland, empowers the County to enact a Zoning Ordinance and to provide for the administration, enforcement, and amendment of same, and

WHEREAS, the Planning Commission has recommended an amendment to the Cecil County Zoning Ordinance regarding the provisions of said Ordinance involving the Buffer requirements and Water Dependent Facility requirements in the Chesapeake Bay Critical Area, and

WHEREAS, a public hearing regarding said proposed amendment was held before the Planning Commission on Monday, 19 April 1999, and

WHEREAS, the Planning Commission recommended approval of said amendment to the Board of County Commissioners, and

WHEREAS, a public hearing regarding said amendment was held before the Board of County Commissioners on Tuesday, 4 May 1999, and

WHEREAS, all requirements of Article 66B, Annotated Code of Maryland, with regard to the amendment of the Cecil County Zoning Ordinance have been met:

NOW, THEREFORE, BE IT ENACTED, by the Board of County Commissioners of Cecil County, State of Maryland, that the following amendment be and is hereby enacted:

Amend by addition **[ ]**.

Amend by deletion {~~—~~}.

ARTICLE XI, PART I, SECTION 196, SUBSECTION 1.a. through 1.b.(3)(d) & Section 198

SECTION 196. Buffer Requirements

1. Tidal Waters, Tidal Wetlands, and Tributary Streams no-disturbance Buffer (see Article II, Section 12 for the definition of Buffer)

   a. Where a tract of land bordering tidal water, tidal wetlands, or tributary streams in the Critical Area is proposed for development or redevelopment and {~~a Buffer exemption has not been granted by the Cecil County Commissioners~~} **[a Buffer Exemption Area has not been mapped and designated by the County Commissioners and approved by the Critical Area Commission]**, a Buffer of at least one hundred and ten (110) feet shall be established **[landward of the mean high water line of tidal waters, tributary streams, and tidal wetlands]** in natural vegetation (except areas of the Buffer which are planted in vegetation where necessary to protect, stabilize, or enhance the shoreline).

   [b.] No development including septic systems, impervious surfaces, parking areas, roads, or structures, are permitted in the Buffer. {~~However, approved development or expansion of water-dependent facilities, as provided in Section 198 are excepted from these Buffer provisions.~~} **[Except for new development or the expansion of existing development associated with water-dependent facilities, as provided in Section 198.]**

   {~~b. The Buffer shall be expanded to include contiguous sensitive areas on the parcel whose development or disturbance may impact streams, wetlands, or other aquatic environments unless the applicant can prove that the development or~~

~~disturbance of these areas will not adversely impact streams, wetlands or other aquatic environments.~~

~~(1) Sensitive areas have the following features: 1) Hydric soils and soils with hydric properties as designated by the Soil Conservation Service; 2) Highly erodible soils; and 3) Slopes greater than fifteen (15) percent.~~

~~(2) This expansion will occur whenever new land development or other land disturbing activities, such as clearing natural vegetation for development, are proposed.~~

~~(3) The Buffer expansion, when required, shall meet the following standards:~~

~~(a) The Buffer shall be expanded four (4) feet for every percent of slope over fifteen (15) percent or to the top of slope.~~

~~(b) The Buffer shall be expanded to the upland limit of adjacent hydric soils, soils with hydric properties, and highly erodible soils, within the Critical Area.~~

~~(c) The Buffer will be expanded to include these soils lying in the drainage area between the proposed land disturbance and the Buffer.~~

~~(d) The expanded Buffer must be shown on plans required for such development.)~~

[2.] [Buffer Expansion]

[a. The Buffer shall be expanded to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.

b. In the case of steep slopes fifteen (15) percent or greater contiguous to the Buffer, the Buffer shall be expanded four (4) feet for every one (1) percent of slope or to the top of the slope, whichever is greater in extent.

c. When Buffer expansion is required for hydric and/or highly erodible soils, because development or disturbance may impact streams, wetlands, or other

aquatic environments, expansion shall be to the upland limit of contiguous hydric and/or highly erodible soils.]

~~{2.}~~**[3.]** Existing sand and gravel operations should establish a Buffer to the greatest extent possible.

Section 198. Water Dependent Facility Requirements

1. Proposed new or expanded water dependent facilities **[may be permitted in the Buffer in IDA and LDA provided they]** ~~{shall}~~ demonstrate the following:

5-4-99
Adopted

Nelson K. Bolender, President

Harry A. Hepburn, Commissioner

Attest:

Alfred C. Wein, Jr., Administrator

Phyllis Kilby, Commissioner

Chesapeake Bay Critical Area Commission

STAFF REPORT
June 2, 1999

APPLICANT:	Queen Anne's County
PROPOSAL:	Program Refinement - Proposed Text Amendments for Transfer of Development Rights (TDRs)
COMMISSION ACTION:	Concurrence with Chairman's Determination
STAFF RECOMMENDATION:	Approval
STAFF:	Susan McConville
APPLICABLE LAW/ REGULATIONS:	COMAR 27.01.02.05 (Resource Conservation Area (RCA) provisions); NR Article 8-1808.1 (d) (Development in the Resource Conservation Area; one dwelling unit per 20 acres)

DISCUSSION

In December 1995, the Commission approved a TDR program as part of Queen Ann's County's comprehensive four-year review. The County program allows RCA land to generate TDRs provided that at least 20 acres are set aside for each development right. The development rights are used elsewhere within the RCA, thus maintaining an overall RCA density in the Critical Area of one dwelling unit per 20 acres.

At its April 27, 1999 meeting, the Board of Commissioners of Queen Anne's County granted conceptual approval to proposed amendments to the Queen Anne's County Code, Environmental Protection, (Title 14), Part IV, Subpart 4, Section 130 Development Standards in Resource Conservation Areas, and the Chesapeake Bay Critical Area Program, Critical Area Transfer of Development Rights (TDR) Program. (See attached amendments.)

The purpose of these amendments is to remove the special conditions limiting the use of private tidal wetlands in calculating the Transfer of Development Rights in Resource Conservation Areas. The amendments are consistent with guidance given to the County by the Commission that the County's TDR program was not required to provide for a minimum of eight acres of upland for each 20 acres set aside when a development right is created.

The Commission's guidance was based on a the fact that there are no minimum requirements regarding TDRs in the Critical Area Act and Criteria. According to the presentation of the issue to the Commission in an April 1, 1999 Staff Report prepared by Ren Serey, the eight-acre provision in the Act applies solely to traditional development within the RCA, where density, absent other factors, is limited to one dwelling unit per 20 acres. The Act is silent on transfer development rights. TDRs, like grandfathered lots and intra family transfers, are not a traditional form of development in the RCA. Rather they are a tool which the Criteria specifically encourage local governments to employ in order to further the resource-protection policies of COMAR 27.02. 05 B.

The Chairman of the Critical Area Commission has determined that these changes constitute refinements to the Queen Anne's County Critical Area Program and is seeking concurrence with that determination.

Strike and Delete Format
Please note:
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Highlight indicates language to be added.
Plain text indicates language to remain the same.

Title 14, Environmental Protection
Part VI. Use and Development Regulations in the Critical Area District
Subpart 4. Use and Development Regulations in Development Areas

Page 185

14-139. Development Standards in Resource Conservation Areas

(c) *Density*

(1) Land within RCA development areas may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. For purposes of computing site capacity the underlying zoning classification shall apply, however, no more than one unit per 20 acres may be located in a RCA development area unless critical area transfer of development rights (TDRs) or intrafamily transfers are used.

(2) In calculating the one dwelling unit per 20 acre density, the area of private tidal wetlands located in the property may be included, provided the density of development on the upland portion of the parcel does not exceed one dwelling unit per eight acres. The area of tidal wetlands must be based on State Wetland Maps.

(3)When TDRs are used, private tidal wetlands on either the Transferor or the Transferee Parcel may be included in the density calculations. The acreage of upland on the Transferor Parcel shall not affect the density of development on the Transferee Parcel.

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Critical Area Transfer of Development Rights (TDR) Program

Notwithstanding other provisions of this Program relating to density limitations, development rights may be transferred from a Critical Area Resource Conservation Area (RCA) parcel provided:

A. Twenty (20) acres are deed restricted as permanent open space on the RCA sending parcel for each development right that is transferred;

B. When calculating the total number of development rights which may be transferred from an RCA sending property, areas of private tidal wetlands on the sending property may be included in the calculation; ~~provided a minimum of eight (8) acres of upland exists on the sending property for each development right to be transferred. Areas of private wetlands on the sending parcel shall be determined by reference to the 1972 State wetland maps or by private survey approved by the Maryland Department of Natural Resources and/or the U.S. Army Corps of Engineers;~~

C. When TDRs are used, private tidal wetlands on either the Transferor or the Transferee Parcel may be included in the density calculations. The acreage of upland on the Transferor Parcel shall not affect the density of development on the Transferee Parcel;

~~C~~.D. The transfer of development rights within the RCA must not result in development on the combined sending and receiving parcels at a density of greater than 1 dwelling unit per 20 acres;

~~D~~.E. The transfer of development rights results in preservation of open space on the sending parcel and facilitates either clustering of development and/or infill of existing development areas on the receiving parcel;

~~E~~.F. The transfer of development rights in the RCA and LDA shall not transfer impervious surface allowances or forest and developed woodland clearing allowances; and

~~F~~.G. The use of TDRs is conducted in accordance with Article VIII, Part 2 of the Queen Anne's County Zoning Ordinance and Subdivision Regulations.

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G. The use of TDRs is conducted in accordance with Article VIII, Part 2 of the Queen Anne's County Zoning Ordinance and Subdivision Regulations.

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CHESAPEAKE BAY CRITICAL AREA COMMISSION

STAFF REPORT
June 2, 1999

APPLICANT:	Maryland Department of Natural Resources
PROPOSAL:	Shore Erosion Control at Pt. Lookout State Park
JURISDICTION:	St. Mary's County
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Tracy Batchelder
APPLICABLE LAW/ REGULATIONS:	COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands

DISCUSSION:

The Maryland Department of Natural Resources (DNR) is proposing to construct at Pt. Lookout State Park approximately 836 linear feet of stone revetment, placing stone a maximum of 17 feet offshore and backfilling and grading to put in the revetment; constructing seven stone breakwaters, four 91.6 linear feet long and three 81.6 linear feet long, with their outboard toe located between 124 feet and 155 feet from mean high water; constructing three stone groins extending between 58 feet and 76 feet from mean high water; placing approximately 862 linear feet of sand beachfill behind the breakwaters on the public swimming beach; and planting approximately 470 linear feet of wetlands behind the revetment. In addition, a 35" X 24" 12-gage corrugated metal pipe will be placed through the revetment to allow passage of existing swale runoff.

Historical shoreline records of Pt. Lookout State Park from 1849-1942 indicate that erosion has caused the shorelines to recede a maximum of approximately 1,000 feet on the Chesapeake Bay and approximately 200 feet on the Potomac River. On average, the annual average rate of shoreline erosion is 11 feet of land on the Bay and 2 feet of land per year along the Potomac. Without shoreline protection measures, the rate of erosion and loss of land is expected to continue. At the request of Critical Area Commission staff, the DNR has reduced the extent of the revetment where possible and is instead placing more breakwaters along the shoreline. While this is more costly, breakwaters have less of an impact on shoreline habitat and often create beaches that provide additional habitat and recreational opportunities.

No forest will be cleared and there are no Habitat Protection Areas on the site. DNR has obtained their tidal wetlands permit and water quality certification from MDE. Construction is expected to commence in September 1999 and be completed by September 2000.

MARYLAND DEPT. OF
NATURAL RESOURCES
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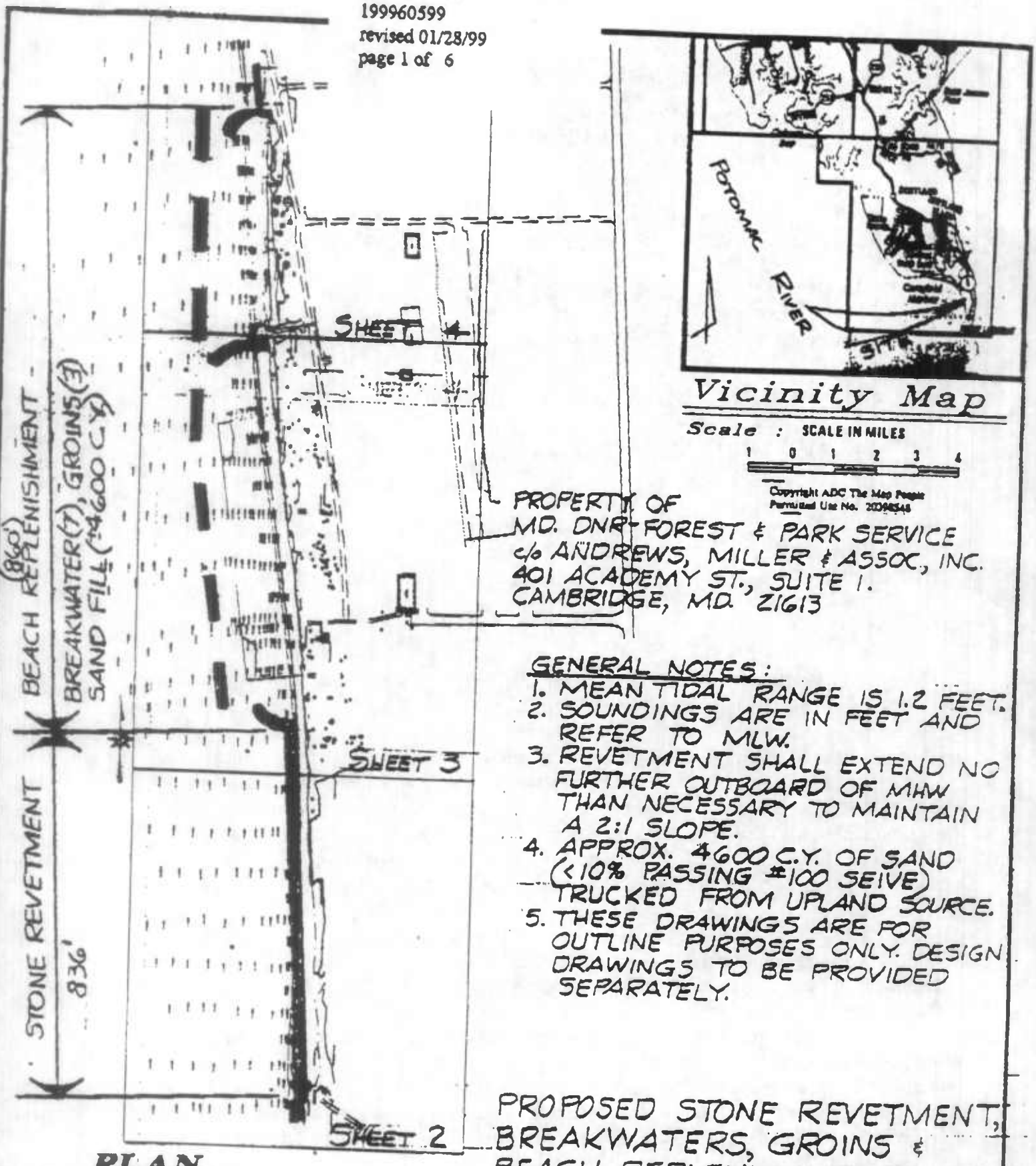
revised 01/28/99
page 1 of 6



Vicinity Map

Scale : SCALE IN MILES

1 0 1 2 3 4

GENERAL NOTES:

1. MEAN TIDAL RANGE IS 1.2 FEET.
2. SOUNDINGS ARE IN FEET AND REFER TO MLW.
3. REVETMENT SHALL EXTEND NO FURTHER OUTBOARD OF MHW THAN NECESSARY TO MAINTAIN A 2:1 SLOPE.
4. APPROX. 4600 C.Y. OF SAND (<10% PASSING #100 SEIVE) TRUCKED FROM UPLAND SOURCE.
5. THESE DRAWINGS ARE FOR OUTLINE PURPOSES ONLY. DESIGN DRAWINGS TO BE PROVIDED SEPARATELY.

PLAN

SCALE : 1" = 300'

300 0 150 300

PROPOSED STONE REVETMENT, BREAKWATERS, GROINS & BEACH REPLENISHMENT

In : St. Mary's County
In : Potomac River
Appl. By : MD. DNR FOREST & PARK SERVICE
Date : October 1998
AMA # : 98060.40
SHEET 1 of 6
Rev. : 1/26/99